

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FRITZ GERALD TOUSSAINT,

Plaintiff,
-against-

CAVALRY PORTFOLIO SERVICE, *et al.*,

Defendants.

24-CV-0087 (LTS)

ORDER DIRECTING
UPDATED ADDRESS

LAURA TAYLOR SWAIN, Chief United States District Judge:

Plaintiff, who is proceeding *pro se*, originally filed this action in the United States District Court for the Eastern District of Pennsylvania on December 28, 2023. Plaintiff's complaint was filed without the \$405.00 filing fees or a completed and signed request to proceed *in forma pauperis* ("IFP"), that is, without prepayment of the filing fees. By order dated January 5, 2024, the Eastern District of Pennsylvania transferred the case to this court. *See Toussaint v. Cavalry Portfolio Serv.*, No. 23-CV-5200 (E.D. Pa. Jan. 5, 2024). That order, mailed to Plaintiff on January 8, 2024, was returned to the court with the following notation, "Return to Sender, Not deliverable as Addressed, Unable to Forward."

By order dated February 7, 2024, in 32 cases that Plaintiff filed in the Eastern District of Pennsylvania, that court enjoined Plaintiff from filing "any pleading or any new civil action unless he first provides the Clerk of Court with a valid mailing address or email at which to receive orders and court notices." *See In Re Toussaint*, No. 23-CV-5193 (E.D. Pa. Feb. 7, 2024).

Plaintiff has not notified the court of a new address where he can receive mail, nor has he consented to electronic service of court documents. Plaintiff also has not made any further written submissions to the court.

As set forth below, Plaintiff is directed to provide an updated address to the court within 30 days of the date of this order.

DISCUSSION

Under Rule 41(b) of the Federal Rules of Civil Procedure, a district court may dismiss an action *sua sponte* for failure to prosecute, as long as the court notifies the plaintiff. *LeSane v. Hall's Sec. Analyst, Inc.*, 239 F.3d 206, 209 (2d Cir. 2001). A court may dismiss an action under Fed. R. Civ. P. 41(b) if the plaintiff fails to notify the court of a new address and the court is unable to contact the plaintiff. *See, e.g., Abdallah v. Ragner*, No. 12-CV-8840 (JPO), 2013 WL 7118083, at *4 (S.D.N.Y. Nov. 22, 2013) (“A plaintiff is required to notify the Court when his address changes, and failure to do so is sufficient to justify dismissal of a plaintiff’s complaint If [the plaintiff] does not contact the Court and update his address within the time allowed, this action will be dismissed for failure to prosecute.” (citing *Fields v. Beem*, No. 13-CV-0005, 2013 WL 3872834, at *2 (N.D.N.Y. July 24, 2013) (collecting cases))).

The Court directs Plaintiff to update the court, in writing, with his new address within 30 days of the date of this order. If Plaintiff does not comply with this order within the time allowed, the Court will dismiss this action, under Rule 41(b) of the Federal Rules of Civil Procedure, without prejudice to Plaintiff’s refiling it and providing a valid address.

Plaintiff may complete the attached “Consent to Electronic Service” form to receive electronic service of notices and documents filed in this case.

CONCLUSION

Within 30 days of the date of this order, Plaintiff must update the court, in writing, with his new address. If Plaintiff fails to comply with this order, the Court will dismiss this action without prejudice under Fed. R. Civ. P. 41(b) for failure to prosecute.

A copy of the “Consent to Electronic Service” form is attached to this order.

The Clerk of Court is directed to docket this order on the court’s electronic case filing system and provide a copy of this order to Plaintiff should he appear in person at the court’s Pro

Se Intake Unit, which is located at 40 Foley Square, Room 105, New York, New York 10007; the order shall not be mailed to Plaintiff because he has failed to provide the court with a valid mailing address.

The Court's warning that the continued filing of litigation in this court without providing a valid address may result in an order directing Plaintiff to show cause why he should not be barred from filing new actions IFP unless he receives prior permission from the court remains in effect. *See Myparkingtickets.com LLC v. City of New York*, ECF 1:24-CV-0397, 5 (S.D.N.Y. Jan. 31, 2024).¹

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore IFP status is denied for the purpose of an appeal. *Cf. Coppedge v. United States*, 369 U.S. 438, 444-45 (1962) (holding that an appellant demonstrates good faith when he seeks review of a nonfrivolous issue).

SO ORDERED.

Dated: February 13, 2024
New York, New York

/s/ Laura Taylor Swain
LAURA TAYLOR SWAIN
Chief United States District Judge

¹ Plaintiff purported to file that action on behalf of "Myparkingtickets.com LLC."



**United States District Court
Southern District of New York**

Pro Se (Nonprisoner) Consent to Receive Documents Electronically

Parties who are not represented by an attorney and are not currently incarcerated may choose to receive documents in their cases electronically (by e-mail) instead of by regular mail. Receiving documents by regular mail is still an option, but if you would rather receive them only electronically, you must do the following:

1. Sign up for a PACER login and password by contacting PACER¹ at www.pacer.uscourts.gov or 1-800-676-6856;
2. Complete and sign this form.

If you consent to receive documents electronically, you will receive a Notice of Electronic Filing by e-mail each time a document is filed in your case. After receiving the notice, you are permitted one “free look” at the document by clicking on the hyperlinked document number in the e-mail.² Once you click the hyperlink and access the document, you may not be able to access the document for free again. After 15 days, the hyperlink will no longer provide free access. Any time that the hyperlink is accessed after the first “free look” or the 15 days, you will be asked for a PACER login and may be charged to view the document. For this reason, *you should print or save the document during the “free look” to avoid future charges.*

IMPORTANT NOTICE

Under Rule 5 of the Federal Rules of Civil Procedure, Local Civil Rule 5.2, and the Court’s Electronic Case Filing Rules & Instructions, documents may be served by electronic means. If you register for electronic service:

1. You will no longer receive documents in the mail;
2. If you do not view and download your documents during your “free look” and within 15 days of when the court sends the e-mail notice, you will be charged for looking at the documents;
3. This service does *not* allow you to electronically file your documents;
4. It will be your duty to regularly review the docket sheet of the case.³

¹ Public Access to Court Electronic Records (PACER) (www.pacer.uscourts.gov) is an electronic public access service that allows users to obtain case and docket information from federal appellate, district, and bankruptcy courts, and the PACER Case Locator over the internet.

² You must review the Court’s actual order, decree, or judgment and not rely on the description in the email notice alone. See ECF Rule 4.3

³ The docket sheet is the official record of all filings in a case. You can view the docket sheet, including images of electronically filed documents, using PACER or you can use one of the public access computers available in the Clerk’s Office at the Court.

PRO SE INTAKE WINDOW LOCATIONS:

40 FOLEY SQUARE | NEW YORK, NY 10007
300 QUARROPAS STREET | WHITE PLAINS, NY 10601

MAILING ADDRESS:

500 PEARL STREET | NEW YORK, NY 10007
PRO SE INTAKE UNIT: 212-805-0136

CONSENT TO ELECTRONIC SERVICE

I hereby consent to receive electronic service of notices and documents in my case(s) listed below. I affirm that:

1. I have regular access to my e-mail account and to the internet and will check regularly for Notices of Electronic Filing;
2. I have established a PACER account;
3. I understand that electronic service is service under Rule 5 of the Federal Rules of Civil Procedure and Rule 5.2 of the Local Civil Rules, and that I will no longer receive paper copies of case filings, including motions, decisions, orders, and other documents;
4. I will promptly notify the Court if there is any change in my personal data, such as name, address, or e-mail address, or if I wish to cancel this consent to electronic service;
5. I understand that I must regularly review the docket sheet of my case so that I do not miss a filing; and
6. I understand that this consent applies only to the cases listed below and that if I file additional cases in which I would like to receive electronic service of notices of documents, I must file consent forms for those cases.

Civil case(s) filed in the Southern District of New York:

Please list all your pending and terminated cases to which you would like this consent to apply. For each case, include the case name and docket number (for example, John Doe v. New City, 10-CV-01234).

Name (Last, First, MI)

Address

City

State

Zip Code

Telephone Number

E-mail Address

Date

Signature